

Assembly Bill No. 446

CHAPTER 413

An act to amend Section 190 of the Penal Code, relating to crimes.

[Approved by Governor September 18, 1997. Filed
with Secretary of State September 19, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 446, Pacheco. Murder: punishment.

Existing law, amended by initiative statute, provides that any person guilty of murder in the 2nd degree shall suffer confinement in the state prison for a term of 25 years to life if the victim was a peace officer who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties.

This bill would increase this term of punishment to confinement in the state prison for life without possibility of parole when the defendant specifically intended to kill the peace officer or to inflict great bodily injury on the peace officer, or personally used a dangerous or deadly weapon or a firearm in the commission of the offense.

This bill would incorporate additional amendments to Section 190 of the Penal Code proposed by Chapter 598 of the Statutes of 1996 but not yet approved by the voters, to be operative if that chapter is approved by the voters at a statewide special election held in 1997 or if no such election is held in 1997.

This bill would provide that it shall become effective only when submitted to, and approved by, the voters.

The people of the State of California do enact as follows:

SECTION 1. Section 190 of the Penal Code, as amended by Chapter 598 of the Statutes of 1996, is amended to read:

190. (a) Every person guilty of murder in the first degree shall suffer death, confinement in the state prison for life without the possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

(b) Except as provided in subdivision (c), every person guilty of murder in the second degree shall suffer confinement in the state

prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties.

(c) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.

(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(d) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(e) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of a sentence imposed pursuant to this section. A person sentenced pursuant to this section shall not be released on parole prior to serving the minimum term of confinement prescribed by this section.

SEC. 2. Section 190 of the Penal Code, as amended by Proposition 179 at the June 7, 1994, statewide primary election, is amended to read:

190. (a) (1) Every person guilty of murder in the first degree shall suffer death, confinement in the state prison for life without the possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

(2) Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

(3) Except as provided in subdivision (b), Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall

apply to reduce any minimum term of 15, 20, or 25 years in the state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.

(b) (1) Except as provided in subdivision (c), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties.

(2) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of 25 years in the state prison when the person is guilty of murder in the second degree and the victim was a peace officer, as defined in this subdivision, and the person shall not be released prior to serving 25 years' confinement.

(c) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.

(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(d) (1) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(2) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 20 years in the state prison when the person is guilty of murder in the second degree and is subject to this subdivision, but the person shall not otherwise be released on parole prior to that time.

SEC. 3. (a) Section 1 of this act shall become operative if either (1) no statewide special election is held in 1997, in which case Section 1 of this act shall be submitted to the voters at the next statewide

election in lieu of Section 1 of Chapter 598 of the Statutes of 1996, or (2) a statewide special election is held in 1997 and Section 190 of the Penal Code, as amended by Chapter 598 of the Statutes of 1996, is approved by the voters at that election, in which case Section 2 of this act shall not become operative and shall not be submitted to the voters and Section 190 of the Penal Code, as amended by Chapter 598 of the Statutes of 1996, shall not be submitted to the voters at a subsequent statewide election. Sections 2 and 3 of Chapter 598 of the Statutes of 1996 shall become operative if either Section 1 of that chapter or Section 1 of this act is adopted by the voters.

(b) Section 2 of this act shall become operative only if Section 190 of the Penal Code, as amended by Chapter 598 of the Statutes of 1996, is rejected by the voters at a statewide special election held in 1997, in which case Section 1 of this act shall not become operative and shall not be submitted to the voters.

SEC. 4. This act affects an initiative statute and shall become effective only when submitted to, and approved by, the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution and in accordance with the provisions of Section 3 of this act.

